

1987 No. 1806

VALUE ADDED TAX

The Value Added Tax (Tour Operators) Order 1987

<i>Made</i>	- - - -	<i>14th October 1987</i>
<i>Laid before the House of Commons</i>	- - - -	<i>21st October 1987</i>
<i>Coming into force</i>	-	<i>1st April 1988</i>

The Treasury, in exercise of the powers conferred on them by sections 3(3), 6(6), 16(4), 37A(1) and (2) and 48(6) of the Value Added Tax Act 1983(a) and of all other powers enabling them in that behalf, hereby make the following Order:

Citation and Commencement

1. This Order may be cited as the Value Added Tax (Tour Operators) Order 1987 and shall come into force on 1st April 1988.

Supplies to which this Order applies

2. This Order shall apply to any supply of goods or services by a tour operator where the supply is for the benefit of travellers.

Meaning of "designated travel service"

3.—(1) Subject to paragraphs (2), (3) and (4) of this article, a "designated travel service" is a supply of goods or services—

- (a) acquired for the purposes of his business; and
- (b) supplied for the benefit of a traveller without material alteration or further processing;

by a tour operator in a member State of the European Community in which he has established his business or has a fixed establishment.

(2) The supply of one or more designated travel services, as part of a single transaction, shall be treated as a single supply of services.

(3) The Commissioners of Customs and Excise may on being given notice by a tour operator that he is a person who to the order of a taxable person—

- (a) acquires goods or services from another taxable person; and
- (b) supplies those goods or services, without material alteration or further processing, to the taxable person who ordered the supply for use in the United Kingdom by that person for the purpose of that person's business other than by way of re-supply—

treat supplies within sub-paragraph (b) as not being designated travel services.

(a) 1983 c.55; section 37A was inserted by section 16 of the Finance Act 1987 (c.16).

(4) The supply of goods and services of such description as the Commissioners of Customs and Excise may specify shall be deemed not to be a designated travel service.

Time of supply

4.—(1) Sections 4 and 5 of the Value Added Tax Act 1983 shall not apply to any supply comprising in whole or in part a designated travel service.

(2) Subject to paragraphs (3) and (4) of this article, all supplies comprising in whole or in part a designated travel service shall, at the election of the tour operator making the supplies, be treated as taking place either—

- (a) when the traveller commences a journey or occupies any accommodation supplied, whichever is the earlier; or
- (b) when any payment is received by the tour operator in respect of that supply which, when aggregated with any earlier such payment, exceeds 20% of the total consideration, to the extent covered by that and any earlier such payment, save insofar as any earlier such payment has already been treated as determining the time of part of that supply.

(3) Save as the Commissioners of Customs and Excise may otherwise allow, all supplies comprising in whole or in part a designated travel service made by the same tour operator shall, subject to paragraph (4) of this article, be treated as taking place at the time determined under one only of the methods specified in paragraph (2) of this article.

(4) Where—

- (a) a tour operator uses the method specified in paragraph (2)(b) to determine the time of a supply; and
- (b) payment is not received in respect of all or part of the supply;

notwithstanding paragraph (3), the time of any part of that supply, which has not already been determined under paragraph (2)(b), shall be determined in accordance with paragraph (2)(a).

Place of supply

5.—(1) The application of sections 6 and 8 of the Value Added Tax Act 1983 in relation to a supply of services or of a designated travel service shall be modified in accordance with the provisions of this article.

(2) A designated travel service shall be treated as supplied in the member State of the European Community in which the tour operator has established his business or, if the supply was made from a fixed establishment, in the member State in which the fixed establishment is situated and in no other place.

(3) Any supply by a tour operator, not being a designated travel service, of transport of persons or their effects shall be treated as being made:

- (a) in the country in which the services are performed to the extent that they are performed in that country; or
- (b) wholly in the country in which the services are performed or partly performed notwithstanding that they may be partly performed outside the territorial jurisdiction of that country, provided that they are not also partly performed in any other country.

(4) Any supply by a tour operator, not being a designated travel service, of cultural, artistic, sporting, entertainment, educational, scientific or related services or of the right of attendance at conferences, shall be treated as being made in the place where the services are performed.

(5) Any supply by a tour operator, not being a designated travel service, of accommodation, or of facilities for camping in tents and caravans, or for parking vehicles, shall be treated as being made in the place where the accommodation or facilities are provided.

(6) Any supply by a tour operator by way of hire of any means of transport which, apart from this paragraph, would be treated as being made outside the European

Community, shall be treated as being made within the United Kingdom where the means of transport is used within the United Kingdom.

6. The Value Added Tax (Place of Supply) Order 1984(a) shall be amended as follows:

(a) by deleting article 4 and substituting the following:

“4. This Order applies to the supply of services of or incidental to the provision of a course of formal instruction in the United Kingdom other than such a supply made as a designated travel service or as part of such a service.”; and

(b) by deleting article 5 and substituting the following:

“5. A “designated travel service” has the same meaning as in the Value Added Tax (Tour Operators) Order 1987.”.

Value of a designated travel service

7. Subject to articles 8 and 9 of this Order, the value of a designated travel service shall be determined by reference to the difference between sums paid or payable to and sums paid or payable by the tour operator in respect of that service, calculated in such manner as the Commissioners of Customs and Excise shall specify.

8.—(1) Where—

- (a) a supply of goods or services is acquired for a consideration in money by a tour operator, for the purpose of supplying a designated travel service, and
- (b) the value of the supply is (apart from this article) greater than its open market value, and
- (c) the person making the supply and the tour operator to whom it is made are connected,

the Commissioners of Customs and Excise may direct that the value of the supply shall be deemed to be its open market value for the purpose of calculating the value of the designated travel service.

(2) A direction under this article shall be given by notice in writing to the tour operator acquiring the supply, but no direction may be given more than three years after the time of the supply.

(3) A direction given to a tour operator under this paragraph, in respect of a supply acquired by him, may include a direction that the value of any supply—

- (a) which is acquired by him after the giving of the notice, or after such later date as may be specified in the notice, and
- (b) as to which the conditions in sub-paragraph (a) to (c) of paragraph (1) above are satisfied,

shall be deemed to be its open market value for the purpose of calculating the value of the designated travel service.

(4) For the purposes of this article any question whether a person is connected with another shall be determined in accordance with section 533 of the Income and Corporation Taxes Act 1970(b).

9.—(1) Where—

- (a) goods and services have been acquired prior to the commencement of this Order; and
- (b) input tax credit has been claimed in respect of those goods and services; and
- (c) the goods and services are supplied as a designated travel service or as part of a designated travel service after the commencement of this Order;

article 7 of this Order shall not apply in determining the value of that part of a designated travel service referable to goods and services on which input tax has been claimed.

(a) S.I. 1984/1685.

(b) 1970 c.10.

(2) The value of that part of the designated travel service to which, by virtue of paragraph (1) of this article, article 7 of this Order does not apply shall be calculated in accordance with section 10 of the Value Added Tax Act 1983.

Tax chargeable on zero-rated and exempt designated travel services

10.—(1) Where a tour operator acquires goods or services of a description for the time being specified in Schedule 5 of the Value Added Tax Act 1983, in order to supply them as a designated travel service or as part of such a service, the rate at which tax shall be charged shall be nil on that portion of the value of the designated travel service supplied which is attributable to the goods and services specified in the Schedule.

(2) Where a tour operator acquires goods or services of a description for the time being specified in Schedule 6 to the Value Added Tax Act 1983, in order to supply them as a designated travel service, or part of such a service, no tax shall be chargeable on that portion of the value of the designated travel service supplied, which is attributable to the goods and services specified in the Schedule.

Amendment of zero-rating provisions

11.—(1) Schedule 5 to the Value Added Tax Act 1983 shall be varied by the addition of a new item to Group 10, after item 12, as follows—

“13. The supply of a designated travel service to be enjoyed outside the European Community, to the extent to which the supply is so enjoyed.”

(2) Schedule 5 to the Value Added Tax Act 1983 shall be varied by the addition of a new Note to Group 10 as follows—

“(7) “Designated travel service” has the same meaning as in the Value Added Tax (Tour Operators) Order 1987.”

Disallowance of input tax

12. Input tax on goods or services acquired by a tour operator for re-supply as a designated travel service shall be excluded from credit under sections 14 and 15 of the Value Added Tax Act 1983.

Disqualification from membership of group of companies

13. A tour operator shall not be eligible to be treated as a member of a group for the purposes of section 29 of the Value Added Tax Act 1983 if any other member of the proposed or existing group—

- (a) has an overseas establishment;
- (b) makes supplies outside the United Kingdom which would be taxable supplies if made within the United Kingdom; and
- (c) supplies goods or services which will become, or are intended to become, a designated travel service.

Option not to treat supply as designated travel service

14.—(1) Where a tour operator supplies a designated travel service he may treat that supply as not being a designated travel service if:

- (a) there are reasonable grounds for believing that the value of all such supplies in the period of one year then beginning will not exceed one per cent of all supplies made by him during that period; and
- (b) he makes no supplies of designated travel services consisting of accommodation or transport.

(2) For the purposes of this article the value of any supplies shall be calculated in accordance with section 10 of the Value Added Tax Act 1983.

14th October 1987

Tony Durant
David Lightbown
Two of the Lords Commissioners of Her Majesty's Treasury

EXPLANATORY NOTE

(This note is not part of the Order)

This Order introduces with effect from 1 April 1988 a special VAT scheme for supplies by tour operators. The vires for such a scheme under UK law lie principally in section 37A of the Value Added Tax Act 1983. The scheme is a requirement under Article 26 of the Council Directive No. 77/388/EEC. (OJ No. L145, 13.6.77, p. 1).

Articles 2 and 3 of the Order define the supplies affected by the scheme.

Articles 4, 7, 8 and 9 vary the normal rules on time of supply and tax value to fit in with the general requirements of the scheme.

Articles 10 and 11 provide reliefs, the latter introducing into Group 10 of Schedule 5 to the Value Added Tax Act 1983 an additional item which will allow supplies of services made under the scheme which are to be enjoyed outside the European Community to be zero-rated.

Article 12 prohibits the deduction of input tax in respect of supplies made under the scheme.

Article 13 is designed to prevent avoidance of tax under the scheme by amending the Value Added Tax Act 1983 provisions which deal with group registration.

Article 14 introduces an option for tour operators not to use the scheme for certain de minimis supplies.

Articles 5 and 6 are made under section 6 of the Value Added Tax Act 1983. Article 5 has two purposes:

- (a) to specify the place of supply of services/supplies made by tour operators under the scheme; and
- (b) to specify the place of supply of certain services of a type made by tour operators but not made under the scheme because they are made "in-house" rather than acquired from any other person.

Article 6 amends the Value Added Tax (Place of Supply) Order 1984 to exclude therefrom any supplies made under the scheme introduced by this Order.